

**PT 01-38**

**Tax Type: Property Tax**

**Issue: Parking Lot Exemption**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**NORTH SIDE MOSQUE,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**Nos. 00-PT-0066  
P.I.N: (99-16-1284)  
13-01-205-041**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Messrs. Brian Wolfberg and J. David Ballinger of Schain, Burney, Ross & Citron on behalf of the North Side Mosque, (hereinafter the “applicant”)

**SYNOPSIS:** This matter raises the limited issue of whether the parking areas situated on real estate identified by Cook County Parcel Index Number 13-01-205-041<sup>1</sup> were used as part of another exempt use, as required by Section 15-125 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*, during the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on February 18, 2000. The Board reviewed applicant’s complaint and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the entire subject property be exempt. On

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1. All subsequent references to the parking areas themselves shall be to the “parking areas;” all subsequent references to the property on which those parking areas are situated shall be to the “subject property.”

August 24, 2000, the Department issued a determination finding, in relevant part that the parking areas were not in exempt use. Applicant filed a timely appeal as to this partial denial and later presented evidence at an evidentiary hearing. Following a careful review of the record made at hearing, I recommend that the Department's determination as to the parking areas be modified to reflect an exemption for some, but not all, of the parking areas.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 4.
2. The Department's position in this matter, is for present purposes, that the parking areas are not in exempt use. Dept. Ex. No. 1.
3. The subject property is located at 6330-6342 N. Campbell, Chicago, Illinois and improved with a multi-level building that was formerly used as a municipal parking garage. Dept. Ex. No. 2; Tr. p. 7.
4. The building contains a 21,804 square foot area that applicant used for worship, prayer and related purposes throughout 1999. This prayer area is not presently at issue because it is already exempt under terms of the Department's determination. Dept. Ex. Nos. 2, 4; Applicant Ex. No. 4A.

5. The building also contains four separate parking areas. These areas, which are at issue herein, occupy a total of 14,850 square feet and are configured as follows:

Upper Roof Parking Area					
	Up Ramp	Down Ramp	Lower Roof Parking Area	Ramp	Up
Access Gate	Ramp to/from Lower Roof	Street Level Parking		Prayer Area	
Open Parking Area (hereinafter the “open area”) <sup>2</sup>					

Dept. Ex. Nos. 2, 4; Applicant Ex. Nos. 1, 4A, 4B; Tr. p. 28.

6. Applicant, a Moslem Mosque, obtained ownership of the subject property via a quitclaim deed from the City of Chicago (hereinafter the "City") dated April 17, 1993. This deed contained a restrictive covenant that provided as follows:

The lower level of the garage and the open area to the south of the garage shall be used for public parking purposes for the general public. Cost to [the] general public for parking shall not exceed the current price charged by [the City] at City Public Parking Lots. This agreement shall be enforced for a period of ten (10) years from the date of this deed.

Applicant Ex. Nos. 3; Tr. p. 11.

7. The City placed this restriction in the deed so as ensure that there would be adequate public parking for the nearby Devon Avenue commercial district. Tr. pp. 8-9.
8. The City enforced the use restriction quite rigorously for approximately four years but ceased its enforcement efforts in 1997 because it discovered that the restricted areas were not being used for public parking. Tr. pp. 9, 15-16, 17.

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2. The open area is part of the subject property but not included within the building improvement. Hence, it is denoted by a dashed, rather than solid, line. Applicant Ex. No. 4A.

9. The City passed an ordinance repudiating the restriction on November 1, 2000.

Applicant Ex. No. 1; Tr. pp. 18-19.<sup>3</sup>

10. Applicant held five daily prayer services at the Mosque throughout 1999.<sup>4</sup> The schedule for these services was as follows:

<b>SERVICE</b>	<b>TIME</b>
Morning	½ hour before sunrise
Afternoon	1:30 p.m.
Late Afternoon	1½ before sunset
Evening	As soon as possible after sunset
Late Evening	8:00 p.m.

Tr. pp. 40-41.

11. Applicant locked the entire Mosque facility, including all of the interior parking areas, shortly after the late evening prayer service concluded. It did not re-open any portion of the Mosque until shortly before the start of the next day's morning service.

Tr. p. 41.

12. Applicant gated off all of the street level parking and employed a full time security attendant to monitor all of the parking areas. Tr. pp. 33.

13. The security attendant was responsible for ensuring that: (1) all of the parking areas were used only when prayer services were held at the Mosque; (2) only members of applicant's Mosque who were attending prayer services could park in the parking areas; (3) all of the parking areas were vacated immediately after each prayer service ended; and, (5) all of the parking areas remained vacant until the next prayer service was to begin. Tr. pp. 32-34, 38.

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3. The certified copy of the ordinance submitted as Applicant Ex. No. 1 does not contain an ordinance number. Nor does it contain any identifying information other than the date and a certification from the City clerk that the document in question is a true and correct copy of a duly passed ordinance kept in the ordinary course of the City's business.

4. The uses described in this and all subsequent Findings of Fact shall be understood to be 1999 uses unless context clearly specifies otherwise.

## **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting some, but not all, of the parking areas from 1999 real estate taxes under Sections 15-40 and 9-185 of the Property Tax Code, 35 **ILCS** 200/1-1, *et. seq.* Accordingly, under the reasoning given below, the determination by the Department that all of the parking areas did not qualify for such exemption should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-40 and 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

### **200/15-40. Religious Purposes, orphanages, or school and religious purposes**

§ 15-40. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ... [.]

35 **ILCS** 200/15-40.

### **200/15-125. Parking areas**

§ 15-125. Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption..[.]

35 **ILCS** 200/15-125.

The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Parking areas, such as the ones at issue herein, are subject to exemption under Section 15-125 if they are: (1) owned by a school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption set forth in the applicable section(s) of the Code; (2) not leased or otherwise used with a view to profit; and, (3) used as part of a use for which an exemption is provided in the Code. 35 ILCS 200/15-125; Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1<sup>st</sup> Dist. 1986). The instant partial denial was based strictly on lack of exempt use. (*See*, Dept. Ex. No. 4). Therefore, only the third requirement is presently at issue.

The deed whereby applicant obtained its ownership interest in the subject property contained a restrictive covenant that made it legally impossible for applicant to use the street level and open parking areas for Mosque-related purposes throughout 1999. Alderman Bernard Stone, who represents the Ward wherein the subject property is located, testified that the City of Chicago did not make any efforts to enforce the restrictive covenant during 1999. (*See*, Tr. pp. 8-19). Nonetheless, public policy dictates that the Department ought not abandon its impartial role in determining whether real

estate is legally subject to taxation (*See*, 35 **ILCS** 200/16-70; 35 **ILCS** 200/16-130) merely because applicant acted in contravention of, and the City chose not to enforce, an otherwise binding restrictive covenant.

The fact that the City ultimately passed an ordinance that repudiated the restriction does not alter the preceding conclusion. This ordinance was not passed until November 1, 2000, a date which occurred well after the 1999 assessment year ended on December 31, 1999. Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980)); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987). Because the only tax year currently at issue is 1999, the repudiatory ordinance lacks decisive impact on this case. Therefore, those portions of the Department's determination that pertain to the ground level and open parking areas should be affirmed.

Concerning the upper and lower roof parking areas, it is first noted that applicant was at liberty to use, and in fact did use, these sections for Mosque-related purposes because the restrictive covenant did not apply thereto. Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

Applicant actually used the upper and lower roof parking areas for Mosque-related purposes throughout 1999. Furthermore, its use of those areas was consistent

with the terms and conditions set forth in the restrictive covenant. Therefore, those portions of the Department's determination that pertain to the upper and lower roof parking areas should be reversed.

Based on the foregoing, I conclude that although the upper and lower roof parking areas were in exempt use throughout 1999, the ground level and open parking areas were not. Therefore, the Department's determination in this matter should be modified to reflect that only the former areas qualify for exemption from 1999 real estate taxes under Sections 15-40 and 15-125 of the Property Tax Code.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

- A. The upper and lower roof parking areas of the building improvement situated on real estate identified by Cook County Parcel Index Number 13-01-205-041 be exempt from 1999 real estate taxes under Sections 15-40 and 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq*; but,
- B. The ground level and open parking areas of said building improvement not be exempt from 1999 real estate taxes under Sections 15-40 and 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq*.

July 13, 2001

Date

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Alan I. Marcus  
Administrative Law Judge